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April 12, 2006

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EX PARTE LETTER

Ms. Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Federal-State Joint Board on
Universal Service; CC Docket Nos. 96-45, 98-
171, 90-571, 92-237, 99-200, 95-116, and 98-170**

Dear Ms. Dortch:

Mercedes-Benz USA, LLC ("MBUSA"), on behalf of its parent company, DaimlerChrysler AG, respectfully submits this *ex parte* letter in connection with the Commission's proceeding to revise the Universal Service Fund ("USF") contribution system.

MBUSA understands the importance of reforming the current revenue-based system for USF contributions, and appreciates the Commission's efforts to protect the long-term sustainability of the USF. However, as the Commission considers various proposals for implementing new numbers-based assessments, MBUSA urges it to ensure that the new system does not have the effect of restricting consumer access to important public safety services, such as core telematics. In order to avoid the negative consequences of a wholesale move to a phone number-based regime, MBUSA suggests that the Commission exempt phone numbers used exclusively for core telematics from USF contribution requirements. If the Commission wishes to assess USF contributions against providers of telecommunications used in the provision of core telematics, it can continue having such assessments made under the current revenue-based system.

I. OVERVIEW OF MBUSA'S TELE AID SERVICE

Core telematics is a public safety "information" service that relies on phone numbers and network airtime provided by Commercial Mobile Radio

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Service ("CMRS") carriers to transmit voice and data communications. Working with its call center partner, ATX Technologies, Inc. ("ATX"), MBUSA provides core telematics through its Tele Aid service to over 400,000 vehicles across the country. Tele Aid is provided at no additional cost for the first year after the purchase of a MBUSA vehicle. Subscribers to the service pay \$240 per year thereafter.

Tele Aid provides a dedicated communications link between the ATX emergency call center and the occupants of MBUSA vehicles. Tele Aid also provides "one-touch" access to MBUSA call centers for roadside assistance, as well as vehicle and related information. ^{1/} A connection to the ATX emergency call center may be established manually, by pressing an emergency "hot button" located inside the vehicle, or automatically, by means of MBUSA's automated collision notification ("ACN") system. The latter is triggered when collision detection sensors inside the vehicle detect an impact, or when other sensors detect that airbags have been deployed or that seatbelt pretensioner devices have been activated. Once the "hot button" or the ACN system has been engaged, the vehicle's location, as determined by means of an on-board GPS satellite receiver, along with the crash sensor signal, are transmitted to the ATX emergency call center. At the same time, a voice connection is established via the dedicated Tele Aid speakerphone, allowing the vehicle's occupants to communicate, if conscious, with ATX call center dispatchers. If the occupants are unable to respond verbally, or indicate that emergency assistance is needed, the ATX call center will summon help by contacting the appropriate PSAP or other local emergency contact.

The Commission has recognized that "telematics systems may offer location capabilities that are either equivalent, or superior, to" standard wireless E-911 systems, and that "[t]elematics call centers provide PSAPs with more accurate location information and on a consistent nation-wide basis." ^{2/} Core telematics services such as Tele Aid are the only wireless services capable of

^{1/} The Tele Aid console consists of three "hot buttons:" one for emergency assistance from the ATX emergency call center; one for roadside assistance (including remote diagnostics); and one for vehicle information from MBUSA's Customer Assistance Center.

^{2/} *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, ¶ 72 (2003) ("*E911 Scope Order*").

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transmitting location data regarding emergencies ubiquitously to every PSAP across the country.

Although Tele Aid relies on phone numbers and CMRS airtime to enable customer vehicles to communicate with ATX and MBUSA call centers, Tele Aid does not provide the ability to call, or be called from, any other locations. Instead, the phone numbers and airtime provided by Tele Aid's CMRS carriers allow merely for the use of "a 'private' dedicated line" between the ATX and MBUSA call centers and each Tele Aid user. ^{3/} For this reason, the Commission has found that the core telematics service model "does not provide competition [to traditional CMRS or wireline exchange service]." ^{4/} Because Tele Aid is, by its nature, used only in very limited circumstances (e.g., in emergencies), the amount of airtime consumed by Tele Aid subscribers averages *less than 10 minutes per year*.

II. TELE AID IS A PUBLIC SAFETY INFORMATION SERVICE

As noted above, Tele Aid is a public safety "information" service, not telecommunications. It "generat[es]," "acquir[es]" and "process[es]" GPS location information and other vehicle-generated data and makes such "information" available to its customers, when needed, "via telecommunications." ^{5/} Moreover, unlike interconnected VoIP services, Tele Aid does not compete against traditional CMRS or wireline telephony services because, as discussed above, it does not provide its users with the ability to call, or be called from, points on the PSTN other than the ATX and MBUSA call centers.

III. A NUMBERS-BASED USF CONTRIBUTION REGIME WOULD HAVE A SEVERE, NEGATIVE IMPACT ON THE TELE AID SERVICE AND ITS SUBSCRIBERS

Under the current USF contribution regime, MBUSA does not make USF contributions relating to Tele Aid directly. Instead, MBUSA's CMRS carriers pass through to MBUSA USF fees as user surcharges based on percentage of telecommunications revenue calculations. This process is fair, and

^{3/} *E911 Scope Order*, ¶ 79 (emphasis in original).

^{4/} *Id.*

^{5/} 47 U.S.C. § 3(20).

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works well because the assessment is based on the airtime that MBUSA purchases from its CMRS providers.

If MBUSA's revenue-based, end-user USF payments (made on the basis of the amount of CMRS airtime consumed by its Tele Aid service) were replaced by a system that charged a flat fee based on each phone number used in the Tele Aid service, the cost of providing Tele Aid would increase dramatically. ^{6/} Such a change would roll back the significant, Commission-acknowledged public safety benefits ^{7/} generated by core telematics, and make it more difficult for automobile manufacturers to offer this nascent, yet valuable, service on a wider range of vehicles.

The potentially dramatic increase in the cost of Tele Aid is not justified by the amount of airtime – *less than one minute per month* – used by Tele Aid customers, nor is it justified by the critical purpose of the USF itself. The USF is an important program, but it should not be subsidized disproportionately by non-CMRS and non-telecommunications services that are used primarily, for public safety purposes. As discussed above, with the exception of the necessary use of phone numbers for the routing of communications between Tele Aid-equipped vehicles and ATX's and MBUSA's call centers, Tele Aid bears no resemblance to the telecommunications services that are currently subject to USF contribution requirements.

^{6/} The following example illustrates the potential impact of a change to per-phone number USF assessments: If each of Tele Aid's 400,000 customers uses, on average, 1 minute of airtime per month, and, for sake of analysis, we assume that MBUSA remits 10¢ per minute to the CMRS carriers that supply it with the numbers and CMRS service needed to provide Tele Aid, then under these conditions the CMRS carriers' monthly universal service contributions that could be passed on as surcharges to MBUSA would be less than \$1,243 per month under the current system (calculated by multiplying 400,000 users x 1 minute per month x 10¢ per minute x 28.5% wireless interstate safe harbor x 10.9% contribution factor). By contrast, under a phone number-based system that assessed a \$1.00 per month universal service contribution for every assigned phone number used for core telematics, the amount of USF-based surcharges that could be passed on to MBUSA would amount to \$400,000 per month.

^{7/} See *E911 Scope Order*, ¶ 76 (“[T]elematics services constitute an alternative to E911-capable commercial wireless services that is consistent with the public safety goals that the Commission set forth in the proceeding to adopt wireless E911 requirements.”)

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Other commenters in this docket have identified similar problems associated with applying a numbers-based USF contributions regime in other contexts. For example, ACUTA notes the inherent problems associated with college and university telephone systems, where many numbers are reserved, but not actually in service for months on end (*i.e.*, during summer breaks). ^{8/} Similarly, both CTIA and Verizon have raised concerns regarding the application of numbers-based calculations on wireless prepaid customers, where bills are not paid on a monthly basis, and wireless family share plans, where additional numbers do not result in greatly increased usage. ^{9/} Finally, ATX has raised concerns similar to those expressed herein regarding the potential impact of a purely numbers-based USF contributions regime on core telematics services. ^{10/} Tele Aid's service shares many of the same incompatibilities with a numbers-based approach as these services, and even more so because, unlike some of these services, Tele Aid provides merely a dedicated, private network that cannot be used to call or receive calls from all points on the PSTN.

IV. IF THE COMMISSION IMPOSES A NUMBERS-BASED USF CONTRIBUTION REGIME, IT SHOULD EXEMPT PHONE NUMBERS USED EXCLUSIVELY FOR CORE TELEMATICS

The Commission has previously recognized that core telematics services should not be regulated like CMRS services. As noted above, in the Commission's E911 docket, the Commission held that core telematics services are not CMRS and should not be subject to the Commission's E911 requirements because "units providing only telematics service cannot transmit and receive commercial wireless calls between the operator of the vehicle and other wireline or wireless end users." ^{11/} If the Commission decides to impose a numbers-based USF contributions regime, it should apply similar reasoning and exempt phone numbers used exclusively for core telematics from USF contribution requirements.

^{8/} See *Comments of ACUTA*, CC Docket No. 96-45 (April 18, 2003) at 4.

^{9/} See *CTIA Ex Parte*, CC Docket No. 96-45 (February 17, 2006) at 5; *Verizon Ex Parte*, CC Docket No. 96-45 (March 3, 2006), at 2-3.

^{10/} See *ATX Ex Parte*, CC Docket No. 96-45 (March 16, 2006); see also *OnStar Ex Parte*, CC Docket No. 96-45 (March 2, 2006 and February 8, 2006).

^{11/} See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order, 18 FCC Rcd 21531, ¶ 17 (2003).

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First, exempting phone numbers used solely for the provision of core telematics services would promote important public safety goals. With such an exemption, consumers who currently use core telematics services would be able to continue receiving the public safety benefits of the services without being required to bear additional, government-mandated costs. Exempting phone numbers used exclusively for core telematics would also encourage the further adoption of core telematics, which would, in turn, promote public safety. Like the existing exemption for local exchange services provided to low-income (Lifeline) consumers, 12/ an exemption for phone numbers used exclusively for core telematics would promote important public interest goals sought by the Commission.

Second, unlike other information services such as interconnected VoIP, core telematics addresses a different set of consumer needs (*i.e.*, safety and security) than traditional telecommunications services and does not compete with or substitute for such services. 13/

Finally, an exemption would ensure that core telematics providers – and their customers – were not forced to disproportionately and inequitably 14/ subsidize the USF. As noted above, the average Tele Aid subscriber uses less than 10 minutes of air time a year, much less than the network and airtime consumed by traditional phone service subscribers. However, under a number-based USF contribution regime, MBUSA, the provider of Tele Aid, would have to pay the same monthly USF assessment per phone number as providers whose subscribers consume a far greater amount of telecommunications minutes and generate a far greater amount of telecommunications revenue per phone number. The Commission has acknowledged that it may have to afford special treatment to phone numbers that are provided for a customer’s “intermittent” use. 15/ Core telematics services pose precisely the type of “intermittent” use issue

12/ See *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, ¶ 62 (2002) (“*USF Second FNPRM*”).

13/ See *E911 Scope Order*, ¶ 79.

14/ See 47 U.S.C. §254(d) (“Every telecommunications carrier shall contribute, on any equitable and non discriminatory basis, to the specific, predictable, and sufficient mechanisms established . . . to preserve and advance universal service.”)

15/ See *USF Second FNPRM*, at ¶97.

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contemplated by the Commission. In this case, an exemption would prevent core telematics services from being disproportionately harmed by the Commission's USF contribution reforms and be more consistent with the Commission's traditional approach to USF contribution.

If the Commission exempted phone numbers used exclusively for core telematics from phone number-based USF contribution requirements, it could nevertheless ensure that the providers of telecommunications used to support the delivery of core telematics (and their core telematics provider customers) pay their fair share into the USF by continuing to assess such telecommunications providers under the existing revenue-based contributions regime and allowing the telecommunications providers to pass their USF assessments on to their core telematics provider customers. Such action would recognize the public safety benefits and low telecommunications usage inherent in the provision of core telematics, while ensuring the application of a fair and equitable USF contribution regime.

V. CONCLUSION

For the reasons discussed above, MBUSA urges the Commission to exempt phone numbers used exclusively for core telematics from any phone number-based USF contribution assessment regime.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ari Q. Fitzgerald', with a stylized flourish at the end.

Ari Q. Fitzgerald
Counsel to Mercedes-Benz USA, LLC

cc: Mr. Thomas Navin
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